United States Copyright Office
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April 13, 2004

Rosenman and Colin
Attn: Simon Bock
575 Madison Avenue
New York, NY 10022-2585

Re: TIME FOR LOVE (Style No. L5); TIME FOR LOVE, (Style L4); TIME FOR PEACE (Style No. P5); TIME FOR PEACE (Style (4); TIME FOR HOPE (Style H5); TIME FOR HOPE (Style H4); TIME FOR LOVE (Styles L2 & L3); TIME FOR PEACE (Styles P2 & P3); TIME FOR HOPE (Styles H2 & H3)
Copyright Control Number: 60-903-1197(R)

Dear Mr. Bock:

The Copyright Office Board of Appeals has reviewed your request for reconsideration of the Office's refusal to register the nine watch designs listed above for your client, A.G., Inc. d/b/a Lucien Piccard. The Board has determined that the above-referenced works cannot be registered. The design elements found on each of these watches contain *de minimis* amounts of originality and thus none of them rise to the level of copyrightable authorship.

ADMINISTRATIVE RECORD

Initial Submission:

On January 14, 2002, the Copyright Office received applications, deposits and fees to register nine watch designs on behalf of A.G., Inc. d/b/a Lucien Piccard.

In a letter dated February 12, 2002, Copyright Examiner James Shapleigh notified you that registration of the nine watch designs was being denied because each watch lacked the artistic or sculptural authorship necessary to support a copyright claim. Also, he noted that copyright does not protect familiar symbols and designs, minor variations of geometric shapes, lettering and typography, or mere variations in coloring.

First Request for Reconsideration:

In a letter dated March 20, 2002, you filed a request for reconsideration regarding the nine watch designs which were refused registration. You argued that the nine watch designs possessed a considerable amount of artistic authorship necessary to support a

copyright claim. Letter from Bock to Shapleigh of 3/20/02, at 1. You argued that both the courts and the Copyright Office had found similar designs to be copyrightable, *citing* Weindling Int'l Corp. v. Kobi Katz, Inc, 56 U.S.P.Q.2d 1763 (S.D.N.Y. 2000), and further asserted that under Feist Publications, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340 (1991), only a slight amount of creativity is required to support a copyright claim. *Id.* at 2. You asserted you were not seeking protection of the individual depicted symbols, but instead "for the totality of the watches, namely, the artistic expression which created the unique selection and arrangement of the goods, words, and symbols." *Id.* at 2.

On June 10, 2002, Attorney-Advisor Virginia Giroux of the Examining Division responded to your request for reconsideration. Following examination of the claims and the arguments raised in your letter, she concluded that none of the nine watch designs contains authorship that is both separable and copyrightable. Letter from Giroux to Bock of 6/10/02, at 1. She stated that in order to be copyrightable, a work must not only be original, but must also possess more than a *de minimis* quantum of creativity, *citing* Feist, supra. *Id.* at 1.

Ms. Giroux agreed that the watches contained separable elements, but concluded that those elements whether taken individually or as a whole were not copyrightable. *Id.* at 2. She found that of the shapes embodied in the watches constituted familiar symbols which were in the public domain, *Id.* at 2, c*iting* 37 C.F.R.Chap.II §202.1(a). She observed that while the Office accepts the principle that a work has to be viewed in its entirety, in this instance the arrangement and combination of elements failed to rise to the level of copyrightability. *Id.* at 3. Finally, Ms Giroux concluded that Weindling International Corp. v. Kobi Katz, Inc., 56 U.S.P.Q.2d 1763(S.D.N.Y. 2000), is distinguishable because the ring involved in that case when taken as a whole contained a sufficient amount of original and creative authorship to support copyright registration. *Id.* at 4.

Second Request for Reconsideration:

In a letter dated October 8, 2002, you filed a second request for reconsideration of the refusal to register these watch designs. You contest Ms. Giroux's characterization of your client's works as "simply 'watch faces,'" contending that each of the works contains "a unique combination of features arranged in such a way as to reflect the artistic expression of the Applicant and to form a distinctive and original watch design." Letter from Bock to Board of Appeals of 10/8/02, at 1. After describing some of the elements in the nine watch designs, you state there is "original artistic authorship in the design of the symbols, use of jewels, and the stylization choices of the lettering and numerals. Thus, original authorship is embodied in the unique combination of the elements that make up the watches, including the distinctive and ornamental arrangement of the jewels, words and symbols on the watch face, cases and bands. *Id.* at 2.

You further assert that both the Copyright Office and the courts have upheld copyrightability of similar designs. *Id.* at 2. Noting that the VA form includes a category identified as "jewelry designs," you contend such a category acknowledges that expression similar to the nine watch designs should be copyrightable. Your letter questions the Office's construction of Feist, claiming that it supports registration in this instance. You continue to assert that Weindling Int'l. Corp. v. Kobi Katz, Inc., 56 U.S.P.Q.2d 1763 (S.D.N.Y. 2000), and Yurman Design Inc. PAJ, Inc., 93 F. Supp.2d 449 (S.D.N.Y. 2000) were similar jewelry designs which secured copyright protection. *Id.* at 2-3. You dispute Ms. Giroux's exclusion of aesthetic value as a consideration in determining copyrightability. *Id.* at 4-5. Other cases cited by you as supporting registration included Mishan & Sons, Inc. v. Marycana, Inc., 662 F. Supp. 1339 (S.D.N.Y. 1987); Severin Montres, Ltd v. Yidah Watch Co., 997 F.Supp 1262 (C.D. Cal. 1997); Kieselstein-Cord v. Accessories by Pearl, Inc., 632 F.2d 989 (2d Cir. 1980); Poe v. Missing Persons, 745 F.2d 1238 (9th Cir. 1984); and McCullock v. Albert E. Price, Inc., 823 F.2d 316 (9th Cir. 1987).

DECISION

After review of the applications, deposits, and the arguments you presented, the Copyright Office Board of Appeals affirms the Examining Division's refusal to register the nine watch designs because none of the nine watch designs contains a sufficient amount of separable artistic authorship necessary to support a copyright registration.

Description of the Works:

The Board agrees with the description contained in the response to the first request for reconsideration. Ms. Giroux described the authorship of each watch as follows:

> The watch faces for TIME FOR LOVE (Styles L5 and L4) consist of a heart shape in one work embedded with gemstones and in the other work a pink colored heart shape. The rims each contain the works "TIME FOR LOVE" and portions of the rim for Style 14 also contain embedded gemstones. The watch faces for TIME FOR PEACE (Styles P5 and P4) consist of the common symbol for peace in one work embedded with gemstones and in the other work a red colored peace symbol. In each case, the rims contain the words "TIME FOR PEACE" and portions of the rim for Style P4 are embedded with gemstones. The watch faces for TIME FOR HOPE (Styles H5 and H4) consist of the common symbol for "Hope" in one work embedded with stones and in the other work green colored. In each work, the rims contain the works "TIME FOR HOPE" and

> portions of the rim for Style H4 are also embedded with gemstones. The watch faces for TIME FOR LOVE (Style Nos. L2 and L3) consist of red or pink heart shapes at the 12, 3, 6, and 9 positions on the watch face. In each work, the rims contain the words "TIME FOR LOVE." The works also each contain a set of heart shapes either fashioned in silver or gemstones that are configured to slide on the yellow watch band. The watch faces for TIME FOR HOPE (Style Nos. H2 and H3) consist of yellow and green symbols for hope at the 12, 3, 8 (sic), and 9 positions on the watch face. In each work, the rims contain the words "TIME FOR HOPE." The works also each contain a set of symbols for hope inscribed in a circle fashioned in either silver or gemstones that is configured to slide on the red watch band. Finally, the watch faces for TIME FOR PEACE (Style Nos. P2 and P3) consist of red or pink symbols for peace inscribed in a circle at the 12, 3, 6, and 9 positions on the watch face. In each work, the rims contain the words "TIME FOR PEACE." The works also contain a set of peace shapes inscribed in a circle fashioned in either silver or gemstones that is configured to slide on the black watch band.

Id. at 2.

In its previous refusals to register these works, the Examining Division has consistently determined that the watches are "useful articles." Although it is true that useful articles are not necessarily prohibited from copyright registration, the works may only be registered if they contain pictorial, graphic, or sculptural features that are either physically or conceptually separable from the useful article.

Conceptual Separability. The Copyright Office articulates a clear test for conceptual separability of non-useful elements:

> Conceptual separability means that the pictorial, graphic, or sculptural features, while physically inseparable by ordinary means from the utilitarian item, are nevertheless clearly recognizable as a pictorial, graphic, or sculptural work which can be visualized on paper, for example, or as free-standing sculpture, as another example, independent of the shape of the useful article, i.e., the artistic features can be imagined separately and independently from the useful article without

> destroying the basic shape of the useful article. The artistic features and the useful article could both exist side by side and be perceived as fully realized, separate works - - one an artistic work and the other a useful article.

The Compendium of Copyright Office Practices, Compendium II, §505.03 (1984). The Copyright Office Board of Appeals also notes the factors that should not be taken into consideration when applying the test of separability: (1) the aesthetic value of the design; (2) the fact that the shape could have been designed differently; or (3) the amount of work that went into the making of the design. *Id.* at §505.05.

In your letter requesting a second reconsideration of the refusal to register, you contend that contrary to §505.05 of Compendium II cited above, the aesthetic value of the design should be considered in determining copyrightability. Letter from Bock to Board of Appeals of 10/8/02, at 4. You urge that a number of courts and at least one commentator share this view. The position that aesthetic value of the design should not be considered in determining copyrightability is a long standing policy of the Copyright Office. The House Report accompanying the 1976 Copyright Revision Act, specifically states: "[A]lthough the shape of an industrial product may be aesthetically satisfying and valuable, the Committee's intention is not to offer it copyright protection under the bill." H.R. Rep. No. 94-1476, at 55 (1976). Your statement that the court, in Kieselstein-Cord v. Accessories by Pearl, Inc., 632 F.2d 989 (2d Cir. 1980) "looked to public reaction to the designs to determine whether they were deserving of copyright protection" is not entirely accurate. While the court did note the popularity and value of the belt buckles, it clearly applied the test of separability to determine copyrightability. Indeed, the court noted "legislative policy supports the Copyright Office's effort to distinguish between the instances where the aesthetic element is conceptually severable and the instances where the aesthetic element is inextricably interwoven with the utilitarian aspect of the article," *citing* Esquire v. Ringer, 591 F.2d 796 (D.C. Cir. 1978) *cert. denied*, 440 U.S. 908 (1979). *Id.* at 993. You also cited Poe v. Missing Persons, 745 F.2d 1238 (9th Cir. 1984) for consideration of elements considered by the 9th circuit which you allege the Copyright Office ignored. Although the Poe court suggested some evidence that might be relevant to the trier of fact on the question of whether the work involved was a useful article of clothing or a work of art (including the usefulness of the article and whether any apparent functional aspects can be separated from the artistic aspects; Poe's intent in designing the article; testimony concerning the custom and usage within the art world and the clothing trade concerning such objects; and, if admissible, evidence as to the work's marketability as a work of art), the court remanded the case to determine whether the creator "designed a functional swimsuit or a work of art. *Id.* at 1243. The Board notes that regardless of what a court may look at in determining whether a work is a work of art, a useful article, or a useful article with separable copyrightable authorship, in cases that deal with whether a work is copyrightable, the court still needs to determine whether the work has sufficient authorship to merit copyright

protection. Evidence of commercial success simply does not have "any tendency to make the existence of any fact that is of consequence to the determination of [copyrightability] more probable or less probable than it would be without the evidence." Paul Morelli Design, Inc. v. Tiffany & Co., 2006 F. Supp. 2d 482 (E.D. Pa. 2002) (*quoting* Fed. R. Evid. 401) (alteration in original). In Poe the question was whether the suit was intended to be worn. Here there is no doubt that these watches are intended to be worn.

De Minimis Authorship:

The Board agrees that the nine watch designs do contain some elements which are separable, but these elements contain a *de minimis* amount of copyrightable expression. The term "useful article" is defined in section 101 of the copyright law as "an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. . ." A watch clearly falls within the definition of useful article because its function is to keep time. Nevertheless, as the Examining Division has already found, elements within these watches such as the symbols for love, peace, and hope, the short phrases "time for love," "time for peace," "time for hope," and the gemstone ornamentation can be regarded as separable. These elements, however, are too simple to support a copyright claim.

The Board also agrees that only a "modicum of creativity" is necessary for copyrightable expression. Feist Publications v. Rural Telephone Service Co., 499 U.S. 340 (1991). It is also true that jewelry may be protected by copyright law. *See* Trifari, Krussman & Fishel, Inc. v. Charel Co., 134 F. Supp. 551 (S.D.N.Y. 1955). However, these conclusions do not mandate that every work submitted for registration, or every item of jewelry, is copyrightable. In Feist, the Court observed that "as a constitutional matter, copyright protects only those constituent elements of a work that possess more than a *de minimis* quantum of creativity." 499 U.S. 363 (1991).

In order for a work to qualify for copyright protection, it must be an "original work of authorship." 17 U.S.C. § 102. Previously, the courts interpreted "original" broadly to cover any "distinguishable variation" of a prior work to constitute sufficient originality as long as it is the product of the author's independent efforts, and is more than merely trivial." Alfred Bell & Co. v. Catalada Fine Arts, Inc., 191 F.2d 99 (2d Cir. 1951); Bleistein v. Donaldson Lithographing Co., 188 U.S. 239, 250 (1903). In fact, as you have observed, in Alfred Bell, the court stated originality for copyright purposes amounts to "little more than a prohibition of actual copying."

Several cases have applied the standard discussed in Bell for creativity and determined that the works did not warrant copyright protection. In your letter for second reconsideration of the refusal to register, you identify as part of the copyrightable authorship in your client's watch designs "the use of jewels, and the stylization choices of the lettering

and numerals." Letter from Bock to Board of Appeals of 10/8/02, at 2. In Vacheron & Constantin-Le Coutre Watches, Inc. v. Benrus Watch Company, Inc., 155 F. Supp. 932 (S.D.N.Y. 1957) *aff'd* 260 F.2d 637 (2d Cir. 1958) a watch manufacturer sold highly decorative watches that incorporated distinctive watch faces. For example, the "Galaxy" face had jeweled sticks in place of the numerals, transparent rotating discs that contain different sized jewels substituted for the hands, and inside the discs were polygonal metal heads cut with facets like a rose-cut diamond. The court agreed with the Register that when any nonutilitarian features were considered separately from the utilitarian features of the watch, they did not meet the requisite level of creativity. The court recognized a "penumbra where the object is so clearly a work of art that its utility will not preclude its registration," giving the example of an engraved glass vase. *Id.* at 934. However, in Vacheron the court did not even find "minimal creativity" in the separable elements such as the hand and numeral designs. The watches involved in the instant case have similar authorship to the watches in Vacheron.

A second case reiterated the concept that common shapes are not copyrightable, and addresses your contention that the design of the symbols for love, hope, and peace can serve as a basis for registration. Letter from Bock to Board of Appeals of 10/8/02, at 2. In Jon Woods Fashions, Inc. v. Donald C. Curran, 8 U.S.P.Q. 2d 1870 (S.D.N.Y. 1988), the work at issue was a fabric design called "Awning Grids" that superimposed a grid of squares over cloth with two inch stripes. The plaintiff claimed that the combination of the stripes and grids created a design that was "enough" of the author's to be both original and creative. The court responded to this argument by restating the Register's position that works lacking the minimal amount of creative authorship include those which consist of "familiar designs or symbols" or a "simple combination of two or three standard symbols such as a circle, a star, or a triangle with minor linear variations. *Id.* at 1872. Therefore, the design elements at issue were not proper subjects for copyright protection even when they are "distinctively arranged or printed."

Other decisions support refusals to register works consisting of standard designs and simple arrangements. In John Muller & Co. v. New York Arrows Soccer Team, Inc., 802 F.2d 989 (8th Cir. 1986) a logo for a soccer team consisting of four angled lines which formed an arrow, and the work "Arrows" written below in cursive script, was denied copyrightability because it lacked the minimal amount of creativity for copyright protection. Other courts have found similar designs not copyrightable. *See e.g.* Magic Market, Inc. v. Mailing Services of Pittsburgh, Inc., 634 F. Supp. 769 (W.D.Pa. 1986)(envelopes printed with solid black stripes and a few words such as "priority message" or "gift check"), Forstmann Woolen Co. v. J.W. Mays, Inc., 89 F. Supp. 964 (E.D.N.Y. 1950)(reproduction of standard fleur-de-lis).

Applying these principles in Homer Laughlin China v. Oman, 22 U.S.P.Q.2d 1074 (D. D.C. 1991), the court affirmed the Copyright Office's refusal to register a commercially

successful chinaware design. The Copyright Office had concluded that the work was not copyrightable because "familiar shapes and symbols are not copyrightable nor are simple variations or combinations of basic geometric designs capable of supporting a copyright registration." 22 U.S.P.Q.2d at 1075 (brackets omitted). As the court stated "[w]hether a particular work reflects a sufficient quantum of creativity to satisfy the copyright laws is not susceptible to bright line rules or broad principles." The court also noted "in determining creativity, such a decision necessarily requires the exercise of informed discretion, and the Register, in part due to having to make such determinations on a daily basis, is generally recognized to possess considerable expertise over such matters." *Id.* at 1075 (citations omitted).

In Feist, the Supreme Court, acknowledged that "original" requires the work to possess at least some degree of creativity. However, Justice O'Connor's opinion stressed that there remains a narrow category of works in which the "creative spark is utterly lacking or so trivial as to be virtually nonexistent." 390 U.S. at 359. Such works are incapable of sustaining copyright protection. The Board finds the elements in these watches to be too trivial to support a copyright.

Combination Too Simple to Support a Copyright Claim:

In your request for a second reconsideration of the refusal to register these works, you assert "that the unique combination of the jewels, symbols, words, and colors used in the watch design depict a deliberate selection and distinctive combination of elements, and, at the very least, demonstrate the type of original authorship the courts have found necessary to entitle a work to copyright protection." Letter from Bock to the Board of Appeals of 10/8/02, at 4. The Board notes that in theory an author creating any work has an unlimited choice of alternatives. However, it is not the possibility of choices that determines copyrightability, but whether the resulting expression contains copyrightable authorship. *See* Florabelle Flowers, Inc. v. Joseph Markovits, Inc., 296 F. Supp. 304, 307 (S.D.N.Y. 1968) (an "aggregation of well known components [that] comprise an unoriginal whole" cannot support a claim to copyright). The Board finds that the designs for each of the nine watches here, upon examination of a particular watch elements individually and as a whole, does not contain a sufficient amount of original and creative authorship to sustain a copyright claim. The fact that an author had many choices does not necessarily mean that the choice the author made meets even the modest creativity requirement of the copyright law.

Recently, two cases were decided by the Ninth Circuit Court of Appeals which support the Board's determination that the combination of elements in the nine watch design are too simple to support a copyright claim. In Satava v. Lowry, 323 F.3d 805 (9th Cir. 2003), an artist brought a copyright infringement action against a competitor over the artist's life-like glass-in-glass sculptures of jellyfish. In this case the court stated: "it is not

true that any combination of unprotectable elements automatically qualifies for copyright protection... [A] combination of unprotectable elements is eligible for copyright protection only if those elements are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship. . . . The combination of unprotectable elements in Satava's sculpture fall short of this standard. The selection of the clear glass, oblong shroud, bright colors, proportion, vertical orientation, and stereotyped jellyfish form, considered together, lacks the quantum of originality needed to merit copyright protection." *Id.* at 811. Likewise, in Lamp Plus, Inc. v. Dolan, 345 F.3d 1140 (9th Cir., 2003), the Ninth Circuit held that the mechanical combination of four preexisting ceiling lamp elements with a preexisting lamp base did not constitute original authorship.

Authorship is Insufficient in Each of the Nine Works:

The Board of Appeals of the Copyright Office agrees with the description of the nine watch designs provided by Ms. Giroux. At the risk of repeating much of her descriptions, the Board finds the nine designs uncopyrightable for the reasons stated below:

- TIME FOR LOVE (Style L4) consists of a pink colored heart shape depicted on the face of the watch, along with numbers 3, 6, 9, and 12. The numbers are located in positions dictated by its function to serve as a time piece. The rims each contain the words "TIME FOR LOVE" and portions of the rim also contain embedded gemstones. The watch is attached to a pink, leather watch band. While the heart shaped symbol could be characterized as "separable," as a familiar symbol it is uncopyrightable. Likewise, the short phrase "time for love," and the gemstones can not support a copyright claim, and the combination is too simple.

- TIME FOR LOVE (Style L5) consists of a heart shape depicted on the face of a watch, along with numbers 3, 6, 9, and 12. The numbers are located in positions dictated by its function to serve as a time piece. The rims each contain the words "TIME FOR LOVE." The work is similar to L4 except it lacks gemstones and a watch band. Neither the heart shape symbol, the short phrase "time for love," or the simple combination can support a copyright claim.

- TIME FOR LOVE (Styles Nos. L2 & L3) consists of red or pink heart shapes at 3, 6, 9, and 12 positions on the watch face. In each work, the rims contain the work "TIME FOR LOVE." The works also contain a set of heart shapes, either fashioned in silver or gemstones that are configured to slide on the red leather watch band. Neither the four small heart shapes at 3, 6, 9, and 12 positions and the phrase "time for love" can support a copyright claim.

- TIME FOR PEACE (Style No. P4) consists of the common symbol for peace depicted in red on the face of the watch, along with numbers 3, 6, 9, and 12. The rims each contain the words "TIME FOR PEACE," and portions of the rim also contain embedded gemstones. The watch is attached to a blue leather watch band. Neither the peace symbol, the short phrase "time for peace," the embedded gemstones, or the combination of these elements can support a copyright claim.

- TIME FOR PEACE (Style No. P5) consists of the common symbol for peace depicted in gemstones on the face of the watch, along with the numbers 3 and 9. The rims each contain the words "TIME FOR PEACE." Neither the peace symbol, the short phrase "time for peace," the gemstones, or the combination of these elements can support a copyright claim.

- TIME FOR PEACE (Style Nos. P2 & P3) consists of red or pink symbols for peace inscribed in a circle at the 12, 3, 6, and 9 positions on the watch face. In each work, the rims contain the words "TIME FOR PEACE." The works also contain a set of peace symbols fashioned in either silver or gemstones that is configured to slide on the black leather watch band. Neither the peace symbol, the short phrase "time for peace," the colors selected, the gemstones, or the combination of these elements is sufficient to support a copyright claim.

- TIME FOR HOPE (Style H4) consists of the common symbol for hope depicted in green on the face of the watch, along with numbers 3, 6, 9, and 12. The rims each contain the words "TIME FOR HOPE," and portions of the rim also contain embedded gemstones. The watch is attached to a yellow leather watch band. Neither the symbol for hope, the short phrase "time for hope," the colors selected, the gemstones, or the combination of these elements is sufficient to support a copyright claim.

- TIME FOR HOPE (Style H5) consists of the common symbol for hope depicted in gemstones on the face of the watch, along with the numbers 3, 6, and 9. The rims each contain the words "TIME FOR HOPE." Neither the symbol for hope, the short phrase "time for hope," the gemstones, or the simple combination of these elements can support a copyright claim.

- TIME FOR HOPE (Style Nos. H2 and H3) consists of yellow or green symbols for hope inscribed in a circle at the 12, 3, 6, and 9 positions on the watch face. In each work, the rims contain the words "TIME FOR HOPE." The works also contain a set of hope symbols fashioned in either silver or gemstones that is configured to slide on the yellow leather watch band. Neither the symbol for hope, the short phrase "time for hope," the coloring selected, the gemstones, or the simple combination of these elements can support a copyright claim.

While a combination of public domain elements may merit copyright protection if that combination contains sufficient originality, (*see e.g.* Feist, 495 U.S. at 358) not every combination of public domain elements does.

In your second request for reconsideration you cite a number of cases purporting to protect similar designs. Two of the cases cited by you were Weindling Int'l Corp. v.Kobi Katz, Inc., 56 U.S.P.Q.2d 1763 (S.D.N.Y. 2000), and Yurman Design, Inc. v. PAJ, Inc., 262 F. 3d 101 (2d Cir. 2001). In upholding the copyrightability of the Kobi Katz ring, the court in Weindling analyzed the various aspects of the jewelry design in question as part of its analysis of copyrightability. *Id.* at 1765-77. This case involved the infringement of the Kobi Katz diamond bridge ring entitled BW 2798 which was registered by the Copyright Office. The ring in question consisted of a single marquis diamond that was transversely mounted between two outwardly flaring pyramidal supports which have pointed upper apex ends. The marquis diamond was suspended between the outside surfaces of the pointed apex ends of the pyramidal supports. The shank of the ring had a line of square cut diamonds inset between the two pyramidal supports and followed the curved contour of the top surface of the band of the ring. The pyramidal support which were further embellished with triangular cut-outs had sharp edges along the top of their edges of the apex about the triangular cut-outs. In the Board's view, the combination and arrangement of the components as embodied in this work contained a sufficient amount of original authorship consistent with the standards set forth in the Feist case to support a copyright registration. The Board does not find this to be the case with respect to any of the nine watch designs involved here.

In Yurman Design, Inc. v. Paj, Inc., 262 F.3d 101(2d Cir. 2001) the court did not provide description of the jewelry pieces in which copyright was upheld. All the pieces had been registered by the Copyright Office, so it is clear that this Office had regarded the jewelry designs as being copyrightable. In order to be responsive to your letter for reconsideration, the Board has looked at the deposit photographs of the four jewelry designs cited in the court's opinion. In general, the jewelry pieces combined a cabling designs with other sculptural elements far more numerous than the small number of elements in the nine watch designs. For this reason, the Board does not believe this case supports registration in this instance.

Three other cases cited by you were Mishan & Sons, Inc. V. Marycana, Inc., 662 F. Supp. 1339 (S.D.N.Y. 1987), Severin Montres, Ltd. v. Yidah Watch Co., 997 F. Supp. 1262 (C.D. Cal. 1997), and McCullock v. Albert E.Price, Inc., 823 F.2d 316 (9th Cir. 1987). Mishan, concerned the copyrightability of Americana-style kitchen magnets. While the magnets contained familiar items, the court believed the works nevertheless constituted "an independent act of authorship." 622 F. Supp. 1339, 1343. These works, which had been registered by the Copyright Office, were, although not what could be fairly described

as ornate, at least more complex than the nine watch designs of your client. The copyright registration of the watch in issue in Severin Montres, was cancelled by the Copyright Office because the separately identifiable matter was not copyrightable. The only separable aspect of that watch design was a single letter of the alphabet, the letter "G." Lettering and typographic ornamentation are not copyrightable. 37 C.F.R. §202.1(a),(e). In McCullock, the copyright was based on the floral design of a license plate. The court there analyzed the phrase "You are special today" as not copyrightable but as amenable to being considered part of the work for purposes of determining substantial similarity. *Id.* at 320.

We agree that an original combination of elements, each of which individually is unoriginal, may be copyrightable if that combination meets the minimal standards of creativity. However, we do not find any creativity in the particular combination of elements presented in these nine watches which use standard symbols for hope, love, and peace. Cf. Compendium II, § 503.02(a) ("simple combination of a few standard symbols such as a circle, a star, and a triangle, with minor linear or spatial variations" not copyrightable); §503.02(b)("mere bringing together of two or three standard forms or shapes with minor linear or spatial variations" not copyrightable).

The designs contained in these watches simply do not have the requisite creativity to support registration. Moreover, while the watches may evoke different responses in members of the public who may associate public domain symbols with certain feelings, such feelings do not contribute to the necessary analysis of whether the work contains a sufficient quantum of creative authorship required under Feist.

CONCLUSION

For the reasons stated above, the Copyright Office Board of Appeals concludes that the nine watch designs cannot be registered for copyright protection. This decision constitutes final agency action.

Sincerely,

/s/

Marilyn J. Kretsinger
Associate General Counsel
for the Appeals Board
United States Copyright Office